

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
333 Queen Street  
Honolulu, Hawaii 96813

October 26, 2007

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, HI

Cancellation of commercial permit issued to Iconoclast, Ltd. for Lahaina small boat harbor and reissuance of Iconoclast, Ltd.'s vessel moored elsewhere permit for Lahaina small boat harbor

**STATUTE:**

Section 200-2, 200-3, 200-4, Hawaii Revised Statutes, as amended.

**LAND TITLE STATUS:**

Section 5(B) lands of the Hawaii Admission Act.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES \_\_\_\_ NO x

**REMARKS:**

Introduction

Iconoclast, Ltd. had a regular mooring permit that allowed its vessel *Man-O-War* to moor offshore of the Lahaina small boat harbor. Iconoclast also had a vessel moored elsewhere permit that allowed *Man-O-War* to use the public loading dock at the Lahaina small boat harbor for loading and unloading passengers.

The owner of Iconoclast, Ltd., Mr. Mark Robinson, purchased the stock of Lahaina Berth 90 Fishing Co., Inc. (LB 90). LB 90 had a regular mooring permit for the Lahaina small boat harbor that allowed its vessel *Great White* to moor in Lahaina small boat harbor (at berth 90). The *Great White* and the regular mooring permit were formerly owned by a commercial fisherman. When this gentlemen passed away a few years ago, the vessel and permit passed to his wife, who availed herself of the option provided by HAR § 12-231-13(c) to convert a commercial fishing operation from personal to corporate ownership.

Anyway, after Mr. Robinson became the owner of both corporations, he sought to combine the two corporation's permits such that LB 90's *Great White* would end up with the right to both moor at and conduct commercial passenger activities from berth 90. This request was erroneously granted by the Lahaina Harbor Agent. After further review, the Lahaina harbor staff was directed to rescind the commercial permit that was issued to Iconoclast, Ltd. and reinstate Iconoclast's vessel moored elsewhere permit.

The corporations have now requested that this action be reviewed by the Board. The Attorney General agrees that review by the Board is appropriate because the permit was erroneously issued and then cancelled (rather than just being denied in the first place).

#### Analysis

There simply is no basis in statute or rule for issuing LB 90 a commercial license in addition to its regular mooring permit that allows commercial fishing. There is a huge waiting list for such commercial licenses.

The corporations' attorney, Dennis Niles, suggests that HAR §13-231-58 (d) is applicable. This rule states in part:

“Upon approval by the department, a person or corporation possessing a valid commercial activity permit for a vessel moored elsewhere may be issued a regular mooring permit at a state boating facility listed in subsection (b), and retain the commercial activity permit, provided that the permittee relinquishes the vessel moored elsewhere permit and that the total number of valid commercial activity permits for vessels moored elsewhere shall be reduced accordingly.” Emphasis added.

Mr. Niles argues that because the corporations are owned by the same person, they can be treated as one “person or corporation” for purposes of these rule. Even assuming that doing so would authorize issuance of the permit, DOBOR strongly disagrees. Its rules relating to corporations, corporate ownership, and transfer are varied and complex. That two corporations have common ownership is no basis for disregarding their status as separate and distinct entities. It would have a huge impact and unpredictable effect on small boat harbors if corporations and their owners could disregard the corporate form when it suits their purposes while otherwise retaining the corporate form and its benefits. Doing so is not authorized by the rules and is contrary to general contract law.

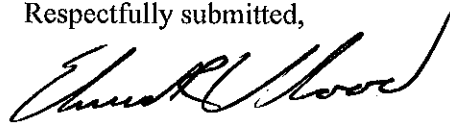
The argument about transfer from “personal” to “corporate” ownership is similarly without merit. The whole point of HAR § 13-231-(c) is to allow the privilege of placing a commercial permit into a corporation. Once the permit is owned by a corporation, the rule has no further application. Mr. Niles' construction of the rule suggests that the words “personal ownership” mean the same thing as “corporate or other business ownership.” This makes no sense, either as a matter of language or in the context of the rule.

#### RECOMMENDATIONS:

That the Board:

1. Authorize and confirm cancellation of the commercial activity permit that was erroneously issued to Iconoclast, Ltd.;
2. Authorize and confirm reissuance of the vessel moored elsewhere permit that was issued to Iconoclast, Ltd.;

Respectfully submitted,



Edward R. Underwood  
Administrator

**APPROVED FOR SUBMITTAL**



Laura H. Thielen  
Chairperson  
Department of Land and Natural Resources